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(3) A discussion of why the conflict cannot be avoided, neutralized, or mitigated; and

(4) Advice of counsel obtained under FAR 9.504(b).

**PART 410—MARKET RESEARCH**

Sec.

410.001 Policy.

410.002 Procedures.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c)

SOURCE: 70 FR 45, Jan. 3, 2005, unless otherwise noted.

**410.001 Policy.**

In addition to those uses listed in FAR 10.001, agencies must use the results of market research to—

(a) Ensure the minimum use of hazardous or toxic materials;

(b) Ensure the maximum use of biobased products and biofuels; and

(c) Identify products and services on or eligible for addition to the Javits-Wagner-O'Day Act Procurement List in order to achieve USDA's goal to increase participation in this program.

**410.002 Procedures.**

Market research must include obtaining information on the commercial quality assurance practices as an alternative for Government inspection and testing prior to tender for acceptance.

**PART 411—DESCRIBING AGENCY NEEDS**

**Subpart 411.1—Selecting and Developing Requirements Documents**

Sec.

411.101 Order of precedence for requirements documents.

411.103 Market acceptance.

411.106 Purchase descriptions for service contracts.

411.170 Brand name or equal.

411.171 Solicitation provisions and contract clauses.

**Subpart 411.2—Using and Maintaining Requirements Documents**

411.202 Maintenance of standardization documents.

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**Subpart 411.4—Delivery or Performance Schedules**

411.404 Contract clauses.

**Subpart 411.6—Priorities and Allocations**

411.600 Scope of subpart.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

**Subpart 411.1—Selecting and Developing Requirements Documents**

**411.101 Order of precedence for requirements documents.**

(a) Office of Management and Budget (OMB) Circular A-119 establishes a Federal policy requiring the use of voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical.

(b) The HCA is authorized to submit the determination required by OMB Circular A-119 that a voluntary standard is inconsistent with law or otherwise impracticable. The HCA must submit the determination to OMB through the National Institute of Standards and Technology in accordance with the Circular with a copy provided to the SPE.

[70 FR 45, Jan. 3, 2005]

**411.103 Market acceptance.**

(a) The head of the contracting activity (HCA) may determine that offerors must demonstrate, in accordance with FAR 11.103(a), the market acceptability of their items to be offered.

(b) The contracting officer shall place a copy of this determination, signed by the HCA, in the solicitation file.

**411.106 Purchase descriptions for service contracts.**

When contract personnel are to be used, the requiring official shall record on the requisition his or her determination whether harm to the Government might occur should contractor